

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, MARCH 1, 2005
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Murphy at 10:06 a.m. Mayor Murphy acknowledged and welcomed Captain Pedro Ramirez, Commanding Officer of the B.A.P. Mollendo Peruvian ship and her crew of 360 people docked here in San Diego to conduct cadet training exercises with the United States Navy. He also acknowledged and welcomed Commander Cesar Prada, Deputy Naval Attaché from the Peruvian Embassy in Washington DC, Commander Cesar Zelada, local representative of the Peruvian Navy and the Honorable Alberto Massa, the new Consul General of Peru in Los Angeles and his wife Mrs. Estela Massa.

Mayor Murphy adjourned the regular meeting at 10:59 a.m. to convene the Housing Authority. The regular meeting was reconvened by Mayor Murphy at 11:00 a.m. with all Council Members present. Mayor Murphy recessed the meeting at 11:02 a.m. to convene the Redevelopment Agency and then later recessed at 11:07 a.m. for the purpose of a break. Mayor Murphy reconvened the regular meeting at 11:15 a.m. with all Council Members present. Mayor Murphy recessed the regular meeting at 11:17 a.m. to reconvene the Redevelopment Agency. Mayor Murphy reconvened the regular meeting at 11:19 a.m. with all Council Members present. Mayor Murphy recessed the regular meeting at 11:57 a.m. to reconvene the Redevelopment Agency. Mayor Murphy reconvened the regular meeting at 11:57 a.m. with Council Member Inzunza not present. Mayor Murphy recessed the regular meeting at 12:03 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:08 p.m. with all Council Members present. Mayor Murphy recessed the meeting at 4:29 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 4:43 p.m. with all Council Members present. Mayor Murphy recessed the meeting at 5:54 p.m. to reconvene the Redevelopment Agency. Mayor Murphy reconvened the meeting at 6:12 p.m. with all Council Members present. Mayor Murphy adjourned the meeting at 6:16 p.m. into Closed Session immediately thereafter to discuss pending and potential litigation and Meet and Confer matters.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present
- Clerk-Abdelnour/Maland (mc/er)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-not present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-not present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Comment by Don Stillwell regarding his recommendation to begin both Monday and Tuesday Council Meetings with prayer.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:18 a.m.)

PUBLIC COMMENT-2:

Comment by Reverend Robert Ard requesting that Council place the Living Wage Ordinance on the docket as soon as possible.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:18 a.m. – 10:22 a.m.)

PUBLIC COMMENT-3:

Comment by Jeff DeMeester requesting that the Council investigate a possible conflict of interest with regard to the San Diego Center for Children and the Family Justice Center.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:22 a.m. – 10:25 a.m.)

PUBLIC COMMENT-4:

Comment by Phil Hart regarding the pension deficit problem.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:25 a.m. – 10:28 a.m.)

PUBLIC COMMENT-5:

Comment by Ron Boshun regarding the City's financial situation and the issue of seizing property under the eminent domain clause.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:28 a.m. – 10:32 a.m.)

PUBLIC COMMENT-6:

Comment by Reverend James Gilbert suggesting that Council consider a Condo Conversion Moratorium.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:32 a.m. – 10:38 a.m.)

PUBLIC COMMENT-7:

Comment by Gregory Smith regarding due process violations.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:38 a.m. – 10:41 a.m.)

PUBLIC COMMENT-8:

Comments by Marvin Carpenter regarding extending public comment rather than reducing it, and the need to resolve the City planning process because of wrong and misleading information being provided to the Council by a City Department.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:41 a.m. – 10:45 a.m.)

PUBLIC COMMENT-9:

Comment by Daniel Coffey regarding the responsibilities of the City Attorney.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:45 a.m. – 10:49 a.m.)

PUBLIC COMMENT-10:

Comment by Muhammed Abdullah regarding the issue of freedom of speech in San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:49 a.m. – 10:52 a.m.)

PUBLIC COMMENT-11:

Comments by Patrick DeShields, Lester Burton and Sherrie Ross inviting Council to the Hope Rally Number 3, that will be held to put an end to the killing and violence in their community on Saturday, March 19, at Memorial Park, beginning at 10:00 a.m.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:52 a.m. – 10:58 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Comment by Council Member Atkins inviting the public to her first State of District 3 Address to be held on Wednesday, March 2, 2005 at 5:30 p.m. at the Balboa Park Club. Council Member Atkins suggested calling 236-6633 for more information.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:58 a.m. – 10:59 a.m.)

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

None.



ITEM-205: In the matter of:

Council Discussion Regarding the Strong Mayor Transition Work Plan.

(See memorandums from Mayor Murphy dated 2/22/2005 and 2/18/2005; and memorandum from Councilmember Young dated 2/22/2005. See City Manager Report CMR-05-049.)

DISCUSSED

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:09 p.m. – 4:29 p.m.)



[ITEM-330:](#) First Amendment to Lease Agreement for the Park and Ride Facilities at College Grove Shopping Center.

(See City Manager Report No. CMR-05-013. Eastern Community Planning Area/College Grove Redevelopment Project Area. District 7.)

(Continued from the meeting of January 25, 2005, Item 330, at the request of Councilmember Madaffer, for further review.)

CITY MANAGER'S RECOMMENDATION:

Introduce the following ordinance:

(O-2005-78) RETURNED TO CITY MANAGER

Introduction of an Ordinance authorizing the City Manager or designee to execute the First Amendment to the Lease Agreement for Park and Ride Facilities at the College Grove Shopping Center.

Staff: Jim LoBue – (619) 533-5263

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 11:00 a.m. – 11:00 a.m.)



[ITEM-331:](#) Grantville Redevelopment Project.

(Navajo, Tierrasanta and College Area Community Areas. District 7.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-812) ADOPTED AS RESOLUTION R-300172

Consenting to a joint public hearing with the Redevelopment Agency (Agency) on the proposed Redevelopment Plan for the Grantville Redevelopment Project (Project) and authorizing the City Clerk, in cooperation with the Executive Director of the Agency, or designee, to establish the date, time, and place therefore;

Declaring the City of San Diego shall, by its designee and in cooperation with the Executive Director of the Agency, or designee, publish and mail the notice of joint public hearing on the proposed Redevelopment Plan, in the manner, and with other documents, as required and established by law.

CITY MANAGER SUPPORTING INFORMATION:

Pursuant to the California Community Redevelopment Law (Health & Safety Code, Section 33000, et seq.), the City Council and the Redevelopment Agency must hold a Joint Public Hearing, to undertake the proposed Redevelopment Project.

The Joint Public Hearing requires an action from both the City Council and the Redevelopment Agency. The City Manager recommends the authorization, approval and adoption of the resolution for the above requested items pertaining to the Grantville Redevelopment Project. This will be a concurrent meeting between the Redevelopment Agency and the City Council.

With the authorization of the Council and the Redevelopment Agency, the Deputy Executive Director will publish notice of a meeting in a newspaper of general circulation for four successive weeks, and through a first class notice to all owners of business, community organizations, residents and owners of property in the Project Area. Staff will work with the City Clerk and the Mayor's office to coordinate this public meeting.

Before acting, the City Council/Agency will consider the Agency's Report on the proposed Redevelopment Project, including but not limited to, the recommendations of the Planning Commission, Grantville Redevelopment Advisory Committee and reports of the County Fiscal Officer and consultations with affected taxing agencies. In addition, the City Council/Agency will consider all evidence and testimony for and against the adoption of the redevelopment plan and the other associated actions.

After the joint City Council/Agency public hearing, the City Council will vote on whether or not to approve and adopt the proposed Redevelopment Plan, Implementation Plan and to certify the Program Environmental Impact Report and Mitigation Monitoring and Reporting Program and adopt Findings and Statements of Overriding Considerations.

Maureen Ostrye/TR

NOTE: See the Redevelopment Agency Agenda of March 1, 2005, for a companion item.

Staff: Tracy Reed/Michele St. Bernard – (619) 533-7519/(619) 533-4218

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:54 a.m. – 11:57 a.m.)

MOTION BY MADAFFER TO ADOPT. Second by Peters. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.



[ITEM-332:](#) Balboa Theatre Selective Demolition and Abatement Phase.

(See Centre City Development Corporation Report No. CCDC-05-02/
CCDC-05-03. Horton Plaza Redevelopment Project Community Area.
District 2.)

CENTRE CITY DEVELOPMENT CORPORATION'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-767) CONTINUED TO TUESDAY, MARCH 15, 2005

Finding that the selective demolition and abatement phase of the rehabilitation of the historical Balboa Theatre for which Centre City Development Corporation (Agency) proposes to pay is of benefit to the Horton Plaza Redevelopment Project; and determining that no other reasonable means for financing the Project are available to the community;

Declaring the Project will assist in eliminating one or more blighting conditions inside the Project Area;

Declaring the Project is consistent with Centre City and Horton Plaza Implementation Plans for July 2004-June 2009, on file in the office of the Secretary to the Agency pursuant to California Health and Safety Code Section 33490.

NOTE: See the Redevelopment Agency Agenda of March 1, 2005 for a companion item.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 11:00 a.m. – 11:01 a.m.)

MOTION BY ZUCCHET TO CONTINUE FOR TWO WEEKS FOR FURTHER REVIEW. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



[ITEM-333:](#) Rancho Bernardo Maintenance Assessment District.

(Rancho Bernardo Community Area. District 5.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-845) ADOPTED AS RESOLUTION R-300173

Resolution of Intention to initiate proceedings for a ballot protest procedure for the Rancho Bernardo Maintenance Assessment District and to levy and collect Fiscal Year 2006 Annual Assessments on Rancho Bernardo Maintenance Assessment District.

CITY MANAGER SUPPORTING INFORMATION:

This action will increase the Fiscal Year 2006 assessments for the Rancho Bernardo Maintenance Assessment District (District). The District is located in the Rancho Bernardo Community Planning Area. It was established in July 1983 and was balloted for Proposition 218 compliance in 1997, and was balloted again in June-July 2004 to increase assessments for existing and proposed new maintenance areas. The June-July 2004 ballot failed by a margin of 51% opposed and 49% in favor. The Rancho Bernardo Maintenance Assessment District Citizens Advisory Committee initially decided to maintain service levels by drawing down reserves, while evaluating whether to ballot again. In October 2004, the Advisory Committee voted to reduce service levels to keep expenditures within revenues. In December 2004, the Advisory Community voted to ballot the District again. Per Resolution R-290239, since the District only failed by 2%, it is eligible for balloting again within one year of vote tabulation.

This second ballot protest procedure would allow for a vote of property owners whether to: (1) raise the annual assessment per Equivalent Benefit Unit (EBU) from \$7.21 to \$15.00 in Fiscal Year 2006, (2) incorporate new areas into the district, and (3) authorize a cost indexing factor of an amount not to exceed San Diego CPI-U plus 3%. The purpose is to increase income sufficiently to cover the current service level, maintain a minimum 10% operating reserve, and fund small planting projects and their future maintenance through the assessment of property owners.

This District would provide maintenance for lands for landscaped medians, median tree up-lighting, hardscaped medians, median sweeping, landscaped rights-of-way, and hardscaped rights-of-way.

	<u>FY 2006</u>	<u>Maximum Authorized</u>
<u>EXPENSES:</u>		
Personnel	\$36,993	\$36,993
Contract	\$251,961	\$308,816
Incidentals	\$60,491	\$74,541
Energy and Utilities	<u>\$21,943</u>	<u>\$29,094</u>
TOTAL EXPENSES	\$371,388	\$449,444
<u>REVENUES:</u>		
Assessments	\$364,424	\$449,505
City Contributions-Gas Tax	\$33,872	\$33,872
Interest	<u>\$5,000</u>	<u>\$5,000</u>
TOTAL REVENUES	\$403,296	\$488,377
 RESERVES	 \$31,908	 \$38,933

The proposed property owner assessment for Fiscal Year 2006 is \$15.00 per EBU. A maximum assessment authorized for Zone 1 of the District is \$18.50 per EBU. Zone 1 of the District contains a total of 24,294.81 EBUs. Zone 2 is not assessed.

FISCAL IMPACT:

It is proposed that the City will contribute \$33,872 from the Gas Tax Fund 302191 for the City's share of expenses incurred for maintenance of street medians comparable to similar areas throughout the City. All other costs are assessed to property owners in the District. The City owns 12 assessable parcels in the district, resulting in a General Fund assessment in Fiscal Year 2006 of \$1,933. The fiscal impact to the City is the same as it was when the ballot failed in June-July 2004.

Herring/Oppenheim/AWF

Staff: Mauro Garcia – (619) 685-1350

FILE LOCATION: STRT - M-300 (34)

COUNCIL ACTION: (Time duration: 11:20 a.m. – 11:20 a.m.)

MOTION BY MAIENSCHIN TO ADOPT. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



ITEM-334: Street Vacation - Portion of Sorrento Valley Road.

(Torrey Pines Community Plan Area. District 1.)

(Continued from the meeting of January 25, 2005, Item 333, at the request of Councilmember Peters, for further review.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-506) RETURNED TO CITY MANAGER

Vacating a portion of Sorrento Valley Road, reserving therefrom a sewer easement together with ingress and egress for that purpose.

CITY MANAGER SUPPORTING INFORMATION:

The vacation of a portion of Sorrento Valley Road has been requested by Soval LLC, the adjoining property owner at 11230 Sorrento Valley Road. The street segment proposed for vacation is unimproved and neglected. The street is not and will not be utilized for right of way purposes. Vacating this part of the street will leave a 100 feet wide public right-of-way, which is sufficient for current and projected traffic volumes.

The area of vacation totals 18,765 square foot and is situated in an IL-3-1 zone which allows commercial use. Current lot size of the applicant's property is 88,950 square feet which allows a maximum floor area of 177,900 square feet. The current use of the applicant's property is a multi-tenant 2 story office building having a floor area of approximately 28,025 square feet.

Along with the vacated street, the lot size would be increased to 107,715 square feet, allowing subject to review, a potential floor area of 215,430 square feet. Although having no current plans for the vacated area, the applicant may develop the vacated street area in conformance with appropriate codes.

The local community planning group, the Torrey Pines Community Planning Board voted in favor of the street vacation 8 yes, 0 no, 3 abstention, noting that "In spite of what MTDB (Metropolitan Transit District Board) believes to be adequate parking at the Sorrento Valley Coaster Station, the TPCPB believes that parking is inadequate and discouraging to those wanting to use mass transit for commuting purposes. By vacating the easement, the City will loose the opportunity to use this site for parking in the future should a funding source for its acquisition become available." A review was sent to MTDB and it does not have plans to acquire this area for a parking lot.

FINDINGS: Staff review has indicated that the right-of-way to be vacated may be summarily vacated and that the four required findings for vacation can be made.

1. That there is no prospective use for the right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated – The remaining street has adequate width. A utility easement will be reserved for an existing public sewer main.
2. That the public will benefit from the action through improved utilization of land made possible by the street vacation – The land will revert to private ownership and will relieve the City of maintenance. The applicant will be responsible for up keeping this neglected area.

3. That the vacation is not inconsistent with the General Plan, an approved Community Plan or the Local Coastal Program – The portion of the street being vacated is not part the community plan transportation element. The Torrey Pines Community Planning Board recommends approval of the street vacation.
4. That the facility for which the right-of-way as originally acquired will not be detrimentally affected by the street vacation – There are no present or future plans to construct a street in this area.

FISCAL IMPACT:

None. All costs are paid for by the applicant.

DEVELOPMENT SERVICES DEPARTMENT RECOMMENDATION:

Approval of this request.

NOTE: This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

Loveland/Broughton/AKW

Staff: Allan Wake – (619) 446-5309.

FILE LOCATION: STRT – J-2967 (39)

COUNCIL ACTION: (Time duration: 11:01 a.m. – 11:02 a.m.)



ITEM-335: deFreitas Residence.

Matter of approving, conditionally approving, modifying or denying an application for a Coastal Development Permit to demolish an existing residence and construct a 4,304 square-foot single family residence on a 0.21 acre site; and Public Right of Way Vacation to summarily vacate a Right of Way dedication pursuant to the California Streets and Highways Code on an unimproved paper street known as John Street. The property is located at 885 Albion Street in the RS-1-7 Zone within the Peninsula Community Plan Area, Airport Approach, Coastal Overlay (non-appealable), Coastal Height Limit, and Council District 2. The portion of John Street to be vacated is the southerly 15-foot portion of the existing 30-foot right-of-way dedication along the entire 125-foot frontage of John Street at 885 Albion Street. The vacation would result in a sub-standard right-of-way of 45 feet for the remaining northerly portion of John Street fronting 905 Albion and 3544 John Street.

(Peninsula Community Plan Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the resolution in subitem A; and adopt the resolution in subitem B to grant the permit:

Subitem-A: (R-2005-843) ADOPTED AS RESOLUTION R-300174

Adoption of a Resolution adopting the findings with respect to Public Right-of-Way Vacation Permit No. 40630;

That the portion of John Street, as more particularly described in the legal description marked as Exhibit "A," and shown on Drawing No. 20295-B, marked as Exhibit "B," and on file in the Office of the City Clerk, which are by this reference incorporated herein and made a part hereof, is ordered vacated reserving therefrom an easement for general utility and emergency access together with ingress and egress for that purpose;

That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

Subitem-B: (R-2005-) GRANTED PERMIT, ADOPTED AS RESOLUTION
R-300175

Adoption of a Resolution granting or denying Coastal Development Permit No. 40627, with appropriate findings to support Council Action.

OTHER RECOMMENDATIONS:

Planning Commission on January 13, 2005, voted 5-0 to approve; no opposition.

Ayes: Steele, Chase, Schultz, Garcia, Ontai
Not present: Otsuji

The Peninsula Community Planning Group has recommended approval of this project.

CITY MANAGER SUPPORTING INFORMATION:

Council action is requested for two discretionary actions: (1) a Coastal Development Permit (CDP) pursuant to 126.0707 to construct a new 4,304 single family residence; and (2) a Right-of-Way Vacation pursuant to 125.0940 of the Municipal Code and Section 8300 et seq. of the California Streets and Highways Code, and in conformance with Council Policy 600-15 to vacate the southerly 15-foot portion of the existing 60-foot right-of-way along the 25-foot frontage of John Street at 885 Albion Street. The project site is within the Peninsula Community Plan, Council District 2.

The Peninsula Community Planning Board considered the project at their meeting on November 18, 2004, and voted 9-0-1 to recommend approval of the project. The City's Planning Commission considered the project at their meeting on January 13, 2005, and voted 5-0-0 on consent to recommend approval of the project.

City staff has determined that the portion of John Street to be vacated would not adversely impact water or sewer utilities. The following utility companies have also determined that the proposed vacation would have no adverse impact on their utilities: SBC (formerly Pacific Bell) and Cox Cable. An easement would be required for San Diego Gas and Electric (SDG&E). In accordance with 125.0910, the portion of the public-of-way to be vacated is not required for street or highway purposes; and the public right-of-way has been impassable for vehicular travel since its creation.

The existing unpaved condition is evidence that public funds have not been expended for maintenance of the public right-of-way. Public improvements of paving, curb, gutter, and drainage improvements would be provided by the applicant as part of the project.

Staff recommends the City Council APPROVE Right-of-Way Vacation 40630 and Coastal Development Permit 406227.

Ewell/Halbert/CHW

FISCAL IMPACT:

No cost the City. All costs are recovered through a deposit account funded by the applicant.

Staff: Cory Wilkinson – (619) 557-7900.

FILE LOCATION: Subitems A & B: LUP – deFrietas Residence,
03/01/05 (65)

COUNCIL ACTION: (Time duration: 11:57 a.m. – 12:03 p.m.)

Testimony in opposition by Mary Toomey.

Testimony in favor by Kevin deFreitas.

MOTION BY ZUCCHET TO ADOPT THE RESOLUTIONS, GRANTING THE PERMIT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.



ITEM-336: Wireless Communication Facilities.

Matter of approving or denying amendments to City Council Policy 600-43 (Wireless Communication Antennas), City Council Policy 700-06 (Encroachments on City Property), and City Council Policy 700-10 (Disposition of City Owned Real Property) and proposed revisions to Section 22.0901 (Leases of Real Property) and Section 141.0420 (Wireless Communication Facilities) of the San Diego Municipal Code as these documents relate to Wireless Communication Facilities.

(See City Manager Report CMR-05-043. City-Wide.)

CITY MANAGER'S RECOMMENDATION:

Introduce the ordinances in subitems A and B; and adopt the resolutions in subitems C, D, and E:

Subitem-A: (O-2005-100) INTRODUCED, TO BE ADOPTED ON
TUESDAY, MAY 3, 2005

Introduction of an Ordinance of the Council of the City of San Diego amending Chapter 14, Article 1, Division 4, of the San Diego Municipal Code by amending Section 141.0420 pertaining to Wireless Communication Facilities Regulations.

Subitem-B: (O-2005-105 Cor. Copy) INTRODUCED, TO BE ADOPTED ON
TUESDAY, MAY 3, 2005

Introduction of an Ordinance of the Council of the City of San Diego amending Chapter 2, Article 2, Division 9, of the San Diego Municipal code by amending Section 22.0901 pertaining to the leasing of city-owned real property.

Subitem-C: (R-2005-849) ADOPTED AS RESOLUTION R-300185

Adoption of a Resolution of the Council of the City of San Diego amending Council Policy No. 600-43 pertaining to Wireless Communication Facilities.

Subitem-D: (R-2005-857) ADOPTED AS RESOLUTION R-300186

Adoption of a Resolution of the Council of the City of San Diego amending Council Policy No. 700-06 pertaining to encroachments on city property.

Subitem-E: (R-2005-858) ADOPTED AS RESOLUTION R-300187

Adoption of a Resolution of the Council of the City of San Diego amending Council Policy No. 700-10 pertaining to disposition of city owned real property.

OTHER RECOMMENDATIONS:

The Community Planners Committee (CPC) on October 26, 2004, voted 16-1 on a motion to approve the Telecommunication Issues Committee (TIC) recommended resolutions to the issues identified at the City Council meeting of July 27, 2004.

The Telecommunication Issues Committee 2 on August 25, 2004, reconvened and proposed recommended resolutions to each of the seven issues identified at the July 27, 2004 City Council hearing. The vote to support each of the recommendations was unanimous.

CITY MANAGER SUPPORTING INFORMATION:

Background

On July 27, 2004, the City Council voted to approve the proposed amended Council Policy 600-43 and various amendments to the San Diego Municipal Code pertaining to Wireless Communication Facilities. At the hearing, seven issues were identified by the public and the industry as needing further consideration. Staff was directed to reconvene the Telecommunication Issues Committee (TIC2) to address the issues and report back with a recommendation to the City Council within 120 days.

The issues include:

1. Revisions to the city policy to allow traffic signals as an option for wireless facilities in the public right-of-way;
2. Consideration of a 100-200 foot separation from residential property lines;
3. Provision of incentives to stay away from residential uses;
4. Consideration of implementing individual comprehensive wireless plans for each community;
5. Consideration of fire stations as a residential use;
6. Re-evaluation of the site access fees; and
7. Re-evaluation of appraisal and leasing process.

On August 25, 2004, TIC2 met to discuss and resolve the seven issues. The Committee came to agreement on each issue and after voting, came to unanimous consensus on the recommended resolution for each issue. TIC2 presented the issues and their recommendations to the Community Planner's Committee (CPC) on October 26, 2004 and a motion to support the recommendations was supported by a vote of 16-1.

Because the leasing issues concerned primarily the industry and READ, staff met with industry representatives to resolve these concerns and determined that the Council Policies and the ordinance dealing with wireless communication facilities and leasing of city property would require amendments in order to clarify and address the identified concerns.

FISCAL IMPACT:

All costs associated with the processing of wireless communication facility applications are paid from a deposit account maintained by the applicant.

Herring/Halbert/KLA

NOTE: The revised Council Policies and amended sections of the San Diego Municipal Code are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3).

Staff: Karen Lynch-Ashcraft – (619) 446-5351.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:44 p.m. – 5:54 p.m.)

Testimony in opposition by Doug Sain, Bill Schwartz, Mary Coakley, Cynthia Conger, Jennie Starr, and Bob Lewis.

Testimony in favor by Mindy Pellissier, Ray Valle, Mac Strobl, and Priscilla Ann Berge.

MOTION BY PETERS TO INTRODUCE THE ORDINANCES IN SUBITEMS A AND B AND ADOPT THE RESOLUTIONS IN SUBITEMS C, D, AND E WITH THE FOLLOWING DIRECTION: PROVIDE DATA ON PERMITTING OF THE WIRELESS COMMUNICATION FACILITIES AFTER THE ORDINANCES ARE IN EFFECT AND THE COASTAL COMMISSION CERTIFICATION OBTAINED, APPROXIMATELY FOUR MONTHS FROM TODAY. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



ITEM-337: Mesa Commons.

Matter of approving, conditionally approving, modifying or denying a Community Plan Amendment/Rezone(from RS-1-7 to RM-1-2), Site Development Permit, Planned Development Permit and a Tentative Map with an Easement Abandonment and a request to waive the requirement to underground existing overhead utilities in order to construct 52 residential units (comprised of 16 row-homes, 31 condominium units and 5 rental units) and 2,833 square-feet of commercial retail space on a 2.12-acre site located at 6456 El Cajon Boulevard in the CU-2-3 Zone of the Central Urbanized Planned District.

(College Area Community Plan Area. District 7.)

CITY MANAGER'S RECOMMENDATION:

Adopt the resolutions in subitems A, B, and D; and introduce the ordinance in subitem C:

Subitem-A: (R-2005-852) ADOPTED AS RESOLUTION R-300176

Adoption of a Resolution certifying that Negative Declaration No. 33812 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administrative Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City Council;

That the City Council finds, based upon the Initial Study and any comments received, that there is no substantial evidence that the project will have a significant effect on the environment and therefore, that said Negative Declaration is hereby approved;

That the City Clerk is directed to file a Notice of Determination associated with that Negative Declaration regarding the above-described project with the clerk of the Board of Supervisors for the County of San Diego.

Subitem-B: (R-2005-850) ADOPTED AS RESOLUTION R-300177

Adoption of a Resolution amending the College Area Community Plan, a copy of which is on file in the office of the City Clerk;

That the Council adopts an amendment to the Progress Guide and General Plan for the City of San Diego to incorporate the above amended plan.

Subitem-C: (O-2005-102) INTRODUCED, TO BE ADOPTED ON MONDAY,
MARCH 14, 2005

Introduction of an Ordinance changing the zoning designation for a property located at 6456 El Cajon Boulevard, in the College Area Community Plan Community Plan Area, in the City of San Diego, California, from the RS-1-7 Zone to the RM-1-2 Zone, as defined by San Diego Municipal Code Section 103.1510; and repealing Ordinance No. O-13558 (New Series), adopted July 5, 1932 of the Ordinances of the City of San Diego insofar as the same conflict herewith.

Subitem-D (R-2005-855) ADOPTED AS RESOLUTION R-300178

Adoption of a Resolution adopting the findings with respect to Tentative Map No. 93414 and Easement Abandonment No. 93614;

That based on the findings hereinbefore adopted by the City Council, Tentative Map No. 93414, including the waiver of the requirement to underground existing overhead utilities, is hereby granted CARTER REESE NO. 15, LP, Applicant/Subdivider, subject to the conditions;

That pursuant to San Diego Municipal Code section 125.1010 (b) and Map Act section 66434 (g) a portion of an eight-foot sewer easement located within Lot three, of Parcel Map 1634 recorded on July 19, 1949, in book 3261, Page 482 of Official Records, located within the project boundaries as shown in Tentative Map No. 93414, shall be abandoned, contingent upon the recordation of the approved final map for the project;

That the recommendation of the Planning Commission is sustained, and Tentative Map No. 93414 and Easement Abandonment No. 93641 is granted to Carter Reese No. 15, LP, subdivider, subject to the attached conditions which are made a part of this resolution.

Subitem-E (R-2005-) ADOPTED AS RESOLUTION R-300205

Adoption of a Resolution granting or denying Planned Development Permit No. 93412 and Site Development Permit No. 93413.

OTHER RECOMMENDATIONS:

Planning Commission on December 2, 2004, voted 6-0 to approve; no opposition.

Ayes: Lettieri, Schultz, Chase, Garcia, Ontai, Otsuji
Abstaining: Steele

The College Area Community Council has recommended approval of this project.

CITY MANAGER SUPPORTING INFORMATION:

BACKGROUND: This application is requesting a General/Community Plan Amendment, Rezone Action, Planned Development and Site Development Permits, Tentative Map and an Easement Abandonment in order to develop a 2.26-acre site with a mixed use commercial/residential project at 6456 El Cajon Boulevard in the College Area community. The project proposes the demolition of an existing (vacant) commercial building and a single-family home to make way for the development of 52 residential units and 2,833 square-feet of commercial retail space. The residential component includes 16 row homes, 31 condominium units and five rental units. The commercial component provides 2,833 square-feet of retail space that would front El Cajon Boulevard.

The General/Community Plan would redesignate the site from general commercial with high to very high residential at 45 to 110 dwelling units per acre to general commercial with medium to medium high residential at 15 to 45 dwelling units per acre along the El Cajon Boulevard portion of the site and low residential at 1 to 10 dwelling units per acre to low to medium residential at 10 to 15 dwelling units along the Catoctin drive portion of the site. In total, this redesignation would allow for construction of the 52-unit mixed-use project being proposed on the property.

The Site Development Permit is required pursuant to Section 126.0502(b)(4) of the Land Development Code because the project exceeds the established threshold for multi-family development of four units in the RM-I-2 Zone when the project combines existing lots in order to provide the development area. The Planned Development Permit is required pursuant to Section 126.0602(b)(1) of the Land Development Code because the project is requesting minor deviations to the development regulations of the underlying zone. The Tentative Map is required to consolidate the existing parcels and develop the project as condominiums to permit the sale of the individual units. The Easement Abandonment action is required because an existing 8-inch public sewer main traverses this property and conveys offsite flow. The project proposes to abandon and relocate the existing on-site public sewer facilities.

The project is also dedicating and vacating portions of the public right-of-way along El Cajon Boulevard and Catoctin Drive in order to provide uniform curb-to-property line widths with adjacent parcels and comply with current right-of-way widths established by the Street Design Manual.

The project has been reviewed in accordance with all applicable development regulations including the Land Development Code, Central Urbanized Planned District Ordinance, Progress Guide and General Plan, College Area Community Plan, the Subdivision Map Act and the California Environmental Quality Act. Staff has considered the issues and determined the project complies with the applicable development regulations and would be consistent with the purpose and intent of the underlying zone and would not adversely impact the overall goals and recommendations of the community plan. On December 2, 2004 the Planning Commission recommended that the project be approved with the added conditions that on-site bike parking facilities are added and the existing overhead utilities be placed underground as a part of the development. An underground program by the City is being completed along Catoctin in the next month that includes the project area and the total required bicycle parking is now being provided on the site.

Staff believes the proposed mixed-use infill development is well designed and overall, the project would be an asset to the surrounding neighborhood and the College Area community.

FISCAL IMPACT:

None. All of the costs associated with processing of this application are paid for by the applicant.

Ewell/Halbert/JPH

LEGAL DESCRIPTION:

The project site lies within both the CU-2-3 and RS-1-7 Zones. A rezone is proposed from RS-1-7 to RM-1-2. The site is also within the Central Urbanized Planned District, Transit Oriented Development Overlay Zone and the College Area Community Plan area and is more particularly described as Parcels 1, 2, 3, 4, and 5, Map 1634.

Staff: Patrick Hooper – (619) 557-7992

FILE LOCATION: Subitems A-D: LUP – Mesa Commons, 03/01/05 (65)

COUNCIL ACTION: (Time duration: 11:20 a.m. – 11:25 a.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTIONS AND INTRODUCE THE ORDINANCE, GRANTING THE MAP, PERMITS, REZONING, WAIVER AND EASEMENT ABANDONMENT. Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



[ITEM-338:](#) Towne Centre Corporate Plaza.

Matter of approving, conditionally approving, modifying or denying the construction of three buildings totaling 190,000 square-feet of gross floor area for Research and Development use on 22.2 acres located at the northwest terminus of Towne Centre Drive.

(See City Manager Report CMR-05-047. Revised Mitigated Negative Declaration 1591/MMRP/MHPA Boundary Adjustment/CDP No. 117798/SDP No. 2758/TM No. 2761/Rezone No. 2759. University Community Plan Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the resolutions in subitems A and B to grant the map; and adopt the resolution in subitem C to grant the permits; and introduce the ordinance in subitem D:

Subitem-A: (R-2005-729) ADOPTED AS RESOLUTION R-300179

Adoption of a Resolution certifying that Mitigated Negative Declaration No. 1591, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a Coastal Development Permit, Site Development Permit, Rezone, Tentative Map, and Multiple Planning Area Boundary Line Adjustment for the Towne Centre Corporate Plaza Project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

That the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

Subitem-B: (R-2005-) GRANTED MAP, ADOPTED AS RESOLUTION
R-300180

Adoption of a Resolution granting or denying Tentative Map No. 2761, with appropriate findings to support Council action.

Subitem-C: (R-2005-) GRANTED PERMIT, ADOPTED AS RESOLUTION
R-300181

Adoption of a Resolution granting or denying Coastal Development Permit No. 117798/Site Development Permit No. 2758, and Multiple Habitat Planning Area (MHPA) Boundary Adjustment, with appropriate findings to support Council action.

Subitem-D: (O-2005-85) INTRODUCED, TO BE ADOPTED ON MONDAY,
MARCH 14, 2005

Introduction of an Ordinance changing the zoning designation for property located at the northwest terminus of Towne Centre Drive, in the University Community Plan Area, in the City of San Diego, California, from the RS-1-7 Zone (Previously referred to as the R-1 Zone) into the IP-1-1 Zone (Previously referred to as the SR Zone), as defined by San Diego Municipal Code Section 131.0602, and repealing Ordinance No. O-18534 (New Series), adopted June 29, 1998, of the Ordinances of the City of San Diego insofar as the same conflicts herewith.

OTHER RECOMMENDATIONS:

Planning Commission on August 26, 2004, voted 5 – 1 to approve; was opposition.

Ayes: Schultz, Steele, Lettieri, Ontai, Otsuji

Nays: Chase

Not present: Garcia

The University Community Planning Group on August 26, 2004, voted 15-0-0 to recommend approval of the project.

CITY MANAGER SUPPORTING INFORMATION:

The project site is located on the northwest end of Town Centre Drive, on a 22.2-acre vacant land immediately west of the Eastgate Technology Park in the University Community Planning Area. Towne Centre Drive is a north-to-south street that turns westward at its north terminus. The University Community Plan designates the site for Scientific Research use. The proposed zone change from the RS-1-7 zone to the IP-1-1 zone would update the site's zoning designation into compliance with the University Community Plan's Scientific Research land use designation. A Rezone is a decision Process 5, which requires Planning Commission recommendation and City Council decision.

In addition to the Rezone, the project also proposes a Tentative Map (TM), Site Development Permit (SDP), Coastal Development Permit (CDP), and Multiple Habitat Planning Area (MHPA) Boundary Adjustment. The northern portion of the lot is located within the Coastal Overlay Zone. The project proposes a TM to subdivide the property along the Coastal Overlay Zone boundary. A CDP is required for development within the Coastal Overlay Zone, unless specifically exempted by San Diego Municipal Code Section (SDMC) 126.0704. A TM is considered a development, and therefore, the proposed project is subject to a CDP. An SDP is required by SDMC 143.0110 for the proposed project's impacts to environmentally sensitive lands (ESL). In addition to the above permits, the project also proposes a Multiple Habitat Planning Area (MHPA) Boundary Line Adjustment.

The Planning Commission voted 5-1-0 on August 26, 2004, to recommend approval of the project (Planning Commission Report No. PC-03-105, August 26, 2004, Attachment 1). The motion to approve requires staff to provide information to the City Council whether adjacent wildlife habitat and trails are considered part of a wildlife corridor. In response to the Planning Commission discussion regarding adjacent sensitive habitat, the applicant reduced the development area by pulling back the northern-most tip by 130 feet. The modification resulted in the reduction of the number of parking spaces by 24, and the preservation of an additional 0.53 acre of sensitive habitat (Attachment 2). The development now proposes 661 parking spaces (3.48 parking spaces per square-foot of floor area). Permit Condition Numbers 26, 27, and 54 are additional project conditions to accommodate this change.

DISCUSSION

Project Description:

The project site is presently undisturbed, consisting of a relatively flat mesa top that drops off on all sides except at the southeastern portion. Proposed grading would create 11.9 acres of flat development area. The Towne Centre Drive extension would be fully improved with curb, gutter, and sidewalk. Several retaining walls are proposed around the perimeter of the level development area the longest at 1,800 lineal feet, and the tallest at 12 feet in height. These walls would be plantable and screened by evergreen shrubs.

An additional 55 parking spaces may be considered at a later date, through the construction of a parking deck behind Buildings A and B. Such a proposal would be subject to an amendment of the Site Development Permit (Permit Condition Number 30. The project also includes the realignment, upgrade, and extension of the existing 10- to 12-foot-wide sewer line and storm drain access road, and proposes an MHPA (Multiple Habitat Planning Area) Boundary Adjustment.

Three buildings totaling 190,000 square feet for Research and Development use are proposed. Research and Development use is permitted by right in the IP-1-1 zone. The proposed building sizes are as follows:

	Gross Floor Area	Height	Stories
Building A	80,500	60	4
Building B	63,500	46	3
Building C	46,000	32	2

FISCAL IMPACT:

All processing costs for this project are recovered from a deposit account funded by the applicant.

Frazier/Halbert/JB

LEGAL DESCRIPTION:

The project site is located at the terminus of Towne Centre Drive, northwest of Westerra Court, in the University Community Planning Area and is more particularly described as Lot A of Pueblo Lot 1320 of Partition Map No. 17622; APN 343-121-03.

Staff: Juan Baligad – (619) 446-5276.

FILE LOCATION: Subitems A-D: LUP – Towne Centre Corporate Plaza, 02/01/05 (65)

COUNCIL ACTION: (Time duration: 11:25 a.m. – 11:36 a.m.)

MOTION BY PETERS TO ADOPT THE RESOLUTIONS AND INTRODUCE THE ORDINANCE, GRANTING THE MAP AND PERMIT. ACCEPT COUNCIL MEMBER FRYE’S REQUEST TO DIRECT STAFF TO PROVIDE HER WITH A LIST, WITHIN THE NEXT TWO WEEKS, OF SOME OF THE MEASURES RELATED TO RIDE SHARING, THAT IS GENERALLY REQUIRED, TO SEE IF THERE ARE OTHER POSSIBLE MEASURES RATHER THAN JUST PROVIDING A KIOSK. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S401: Consultant Selection for the Mayor-Council Form of Government Transition Process.

(See City Manager Report CMR-05-049.)

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-891) ADOPTED AS RESOLUTION R-300188

Authorizing the City Manager to execute one or more agreements with the selected consultant(s) for the Mayor-Council form of government transition process, in an amount not to cumulatively exceed \$150,000.

CITY MANAGER SUPPORTING INFORMATION:

On January 24, 2005, the Mayor and City Council directed the City Manager to issue a Request for Qualifications ("RFQ") for consulting services for the transition process to the Strong Mayor/Strong Council form of government and to commence the selection process.

The RFQ was issued on Friday, January 28, 2005 and responses were due on February 11, 2005. Seven consulting firms responded to the RFQ and six were interviewed. A selection committee was formed and included representatives from the Mayor's office, the City Council, City Attorney, City Manager, the League of Women Voters, San Diego State University and a local government relations consulting firm.

The selection committee ranked the top three consulting firms and formulated four alternatives to present to the City Council for their consideration and approval.

1. Select the top ranked consultant (Management Partners Incorporated) and authorize the City Manager to enter into a contract not to exceed \$150,000.
2. Select one or more of the top three ranked consultants to work on particular tasks outlined in the transition plan (to be determined on the basis of the firm's expertise), and direct the City Manager to enter into separate and distinct contracts with each, not to cumulatively exceed \$150,000.
3. Direct city staff to conduct a major portion of the transition work, which could be supplemented on an as-needed basis by one or more of the top ranked consultants, and authorize the City Manager to enter into a contract for fixed tasks with a limited set fee.
4. Direct city staff to conduct all of the transition work without assistance from a consulting team.

The Resolution would authorize the City Manager to enter into a contract, under the City Manager authority, with the selected consultant(s) not to exceed \$150,000.

Herring/BAM

Staff: Beth Murray – (619) 236-6720

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:09 p.m. – 4:29 p.m.)

MOTION BY MADAFFER TO ADOPT CITY MANAGER'S OPTION 3 NOT TO EXCEED \$150,000 FOR ANY OR ALL CONSULTANTS. THE CITY COUNCIL SHALL MEET ON MONDAYS AT 2:00 P.M. INITIALLY, WITH TWO MEETINGS SET FOR APRIL 4 AND APRIL 11 AND OTHER MEETINGS TO BE SCHEDULED BY THE MAYOR, BUT INCUMBENT IN THE MOTION IS THE OPTION TO MEET ON THURSDAYS AT 2:00 P.M. AS A BACK UP, ASSUMING BUDGET AND OTHER PRESSING ISSUES OF THE CITY DO NOT ALLOW MEETING AS OFTEN AS NECESSARY ON MONDAYS. THE COUNCIL CAN REFER OUT TO STANDING COMMITTEES PARTICULAR IDEAS AND TOPICS THAT THOSE STANDING COMMITTEES COULD ADDRESS. THEY WOULD THEN REPORT BACK TO THE COUNCIL. CONSTITUENT SERVICES SHALL BE ADDED TO THE WORK PLAN. CREATE AN ELEVEN-MEMBER CITIZENS ADVISORY COMMITTEE, ONE MEMBER APPOINTED BY EACH COUNCIL MEMBER PLUS TWO REPRESENTATIVES ONE PROFESSIONAL TO BE DETERMINED BY THE PROFESSIONAL GROUP AND THE OTHER SHALL BE NORMA DAMASHEK. THE COMMITTEE SHALL BE STAFFED BY THE CITY MANAGER. Second by Young. Passed by the following vote: Peters-nay, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

MOTION BY ZUCCHET TO DIRECT CITY STAFF TO CONDUCT THE MAJOR PORTION OF THE TRANSITION WORK WHICH COULD BE SUPPLEMENTED ON AN AS-NEEDED BASIS BY DEWEY SQUARE FOR THE COUNCIL ORIENTED TASKS AND MPI FOR THE MAYOR ORIENTED TASKS, AND AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR FIXED TASKS WITH A LIMITED SET FEE. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-nay, Maienschein-nay, Frye-nay, Madaffer-nay, Inzunza-yea, Mayor Murphy-yea.

MOTION BY FRYE THAT NO MORE THAN \$100,000 SHALL BE PAID TO ANY ONE CONSULTANT. Second by Mayor Murphy. Passed by the following vote: Peters-nay, Zucchet-nay, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-nay, Mayor Murphy-yea.



ITEM-S402: Second Amendment to Retention Agreement with Vinson & Elkins to Provide Representation Before the Securities and Exchange Commission and to Perform Additional Investigation with Respect to the Audit of the City's FY 2003 Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-) ADOPTED AS RESOLUTION R-300182

Authorizing a second amendment to the retention agreement between the City of San Diego and Vinson & Elkins, in an amount not to exceed an additional \$1,200,000, for legal services related to representing the City before the Securities and Exchange Commission, and to perform additional investigation related to the audit by KPMG of the City's FY 2003 Financial Statements.

CITY MANAGER SUPPORTING INFORMATION:

The City previously retained the law firm of Vinson & Elkins (V&E) to prepare an internal report on the City's securities disclosure practices from 1996 through the present, and to provide representation of the City before the federal Securities and Exchange Commission [SEC] with respect to an investigation by the SEC. The total contract amount authorized by the Mayor and City Council for those purposes was in an amount not to exceed \$2.0 million. Vinson & Elkins delivered its report to the City, and has been continuing to represent the City before the SEC, primarily at this time focused on responding to document requests and other requests for information.

The City's FY 2003 CAFR has not been finalized and issued. The City Manager retained the firm of KPMG, LLP to perform the audit of the City's FY 2003 basic financial statements. Pursuant to accounting standards and practices, the City needs to conduct additional investigation beyond the scope of the Vinson & Elkins Report on Investigation to address issues relating to the financial statements. The additional investigation is necessary because the City's and KPMG's obligations with respect to allegations of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned. The additional investigation will address legal issues and allegations of wrongdoing that were not the subject of the Vinson & Elkins Report.

V&E was retained to perform the additional investigation by the City Manager. The initial contract amount was not to exceed \$250,000, which was amended by the City Council in November 2004 for an additional \$350,000. The City has also retained additional expertise to advise it in these matters, including the law firm of Susman Godfrey, which provides expertise in accounting law, and the firm Chicago Partners, which provides forensic auditing expertise. The City continues to work cooperatively with KPMG on progress of the additional investigation. In addition, the City Attorney is also conducting an investigation of these allegations of wrongdoing. In order to complete the additional investigation, additional funding for V&E's services is required. An additional \$1,200,000 is needed to continue with the additional investigation. Additional sums may be necessary in the future depending on any additional scope and requirements as a result of the ongoing investigation.

Ewell/Vattimo

Aud. Cert. 2500773.

Staff: Martin Kane – (619) 236-6882

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:36 a.m. – 11:54 a.m.)

MOTION BY PETERS TO ADOPT WITH DIRECTION TO THE CITY ATTORNEY TO CONSIDER: 1) WHETHER THERE IS A WAY TO MANAGE THE BUDGET FOR THE ATTORNEY FEES THAT WOULD ALLOW POTENTIALLY SOME CONSOLIDATION OF ALL THE LEGAL SERVICES; 2) VIEWING LEGAL REPRESENTATION FOR THE CRIMINAL INVESTIGATIONS DIFFERENTLY PARTICULARLY WITH RESPECT TO PEOPLE WHO ARE ONLY INVOLVED AS WITNESSES.

ACCEPT COUNCIL MEMBER FRYE'S REQUESTS FOR THE CITY ATTORNEY TO: 1) PROVIDE A MEMORANDUM TO COUNCIL NEXT WEEK WITH AN UPDATE ON EACH OF THE MAJOR FIRMS THAT THE CITY HAS RETAINED, BOTH THE ACCOUNTING AS WELL AS THE LAW; 2) PROVIDE AN UPDATE ON THE PROGRESS OF THE VINSON AND ELKINS REPORT AND THE NUMBER OF PEOPLE WHO STILL HAVE TO BE INTERVIEWED WITHOUT IDENTIFYING THE PEOPLE; 3) PROVIDE COUNCIL WITH A PROGRESS REPORT, EITHER WEEKLY OR EVERY TWO WEEKS, INFORMING COUNCIL OF THE ONGOING PROGRESS. REPORT SHOULD INCLUDE A TIMELINE, MILESTONES AND BENCHMARKS.

ACCEPT COUNCIL MEMBER FRYE’S REQUEST TO THE CITY MANAGER THAT AS THE INVESTIGATION CONTINUES, INFORM COUNCIL EITHER ON A FORM OR BY POINTING OUT TO THEM BEFORE A VOTE IS TAKEN, WHICH ITEMS WOULD BE OVER BUDGET OR WOULD KICK THE CITY OVER BUDGET.

Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 6:16 p.m. in honor of the memory of:

Muriel Fischer as requested by Council Member Atkins, and
Mary Nasserri as requested by Council Member Maienschein.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:12 p.m. – 6:16 p.m.)